

1 AN ACT

2 RELATING TO GAMING; REMOVING THE LIMITATION ON THE GAMING
3 CONTROL BOARD EXECUTIVE DIRECTOR'S SALARY; PROVIDING
4 DISCRETION TO THE GAMING CONTROL BOARD REGARDING ISSUING
5 LICENSES TO APPLICANTS WHO HAVE BEEN DENIED LICENSES IN NEW
6 MEXICO OR OTHER STATES; ALLOWING THE BOARD TO ADOPT RULES FOR
7 VOLUNTARY EXCLUSION OF COMPULSIVE GAMBLERS FROM THE AREA
8 WHERE GAMING OCCURS IN A GAMING ESTABLISHMENT; IMPOSING
9 COMPULSIVE GAMBLER FEES ON NONPROFIT GAMING OPERATORS.

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

12 Section 1. Section 60-2E-7 NMSA 1978 (being Laws 1997,
13 Chapter 190, Section 9, as amended) is amended to read:

14 "60-2E-7. BOARD'S POWERS AND DUTIES.--

15 A. The board shall implement the state's policy on
16 gaming consistent with the provisions of the Gaming Control
17 Act. It has the duty to fulfill all responsibilities
18 assigned to it pursuant to that act, and it has all authority
19 necessary to carry out those responsibilities. It may
20 delegate authority to the executive director, but it retains
21 accountability. The board is an adjunct agency.

22 B. The board shall:

23 (1) employ the executive director;

24 (2) make the final decision on issuance,

25 denial, suspension and revocation of all licenses pursuant to

1 and consistent with the provisions of the Gaming Control Act;

2 (3) develop, adopt and promulgate all
3 regulations necessary to implement and administer the
4 provisions of the Gaming Control Act;

5 (4) conduct itself, or employ a hearing
6 officer to conduct, all hearings required by the provisions
7 of the Gaming Control Act and other hearings it deems
8 appropriate to fulfill its responsibilities;

9 (5) meet at least once each month;

10 (6) prepare and submit an annual report in
11 December of each year to the governor and the legislature,
12 covering activities of the board in the most recently
13 completed fiscal year, a summary of gaming activities in the
14 state and any recommended changes in or additions to the laws
15 relating to gaming in the state; and

16 (7) impose civil fines not to exceed:

17 (a) five thousand dollars (\$5,000) for
18 violation by a key executive or any other person employed by
19 or working pursuant to a contract with a gaming establishment
20 of the prohibition against disclosure of names of persons who
21 are self-excluded; and

22 (b) twenty-five thousand dollars
23 (\$25,000) for violation by the gaming operator licensee of
24 the prohibition against disclosure of names of persons who
25 are self-excluded.

1 C. The board may:

2 (1) impose civil fines not to exceed
3 twenty-five thousand dollars (\$25,000) for the first
4 violation and fifty thousand dollars (\$50,000) for subsequent
5 violations of any other prohibitory provision of the Gaming
6 Control Act or any prohibitory provision of a regulation
7 adopted pursuant to that act;

8 (2) conduct investigations;

9 (3) subpoena persons and documents to compel
10 access to or the production of documents and records,
11 including books and memoranda, in the custody or control of a
12 licensee;

13 (4) compel the appearance of employees of a
14 licensee or persons for the purpose of ascertaining
15 compliance with provisions of the Gaming Control Act or a
16 regulation adopted pursuant to its provisions;

17 (5) administer oaths and take depositions to
18 the same extent and subject to the same limitations as would
19 apply if the deposition were pursuant to discovery rules in a
20 civil action in the district court;

21 (6) sue and be sued subject to the
22 limitations of the Tort Claims Act;

23 (7) contract for the provision of goods and
24 services necessary to carry out its responsibilities;

25 (8) conduct audits, relevant to their gaming

1 activities, of applicants, licensees and persons affiliated
2 with licensees;

3 (9) inspect, examine, photocopy and audit
4 all documents and records of an applicant or licensee
5 relevant to his gaming activities in the presence of the
6 applicant or licensee or his agent;

7 (10) require verification of income and all
8 other matters pertinent to the gaming activities of an
9 applicant or licensee affecting the enforcement of any
10 provision of the Gaming Control Act;

11 (11) inspect all places where gaming
12 activities are conducted and inspect all property connected
13 with gaming in those places;

14 (12) summarily seize, remove and impound
15 from places inspected any gaming devices, property connected
16 with gaming, documents or records for the purpose of
17 examination or inspection;

18 (13) inspect, examine, photocopy and audit
19 documents and records, relevant to his gaming activities, of
20 any affiliate of an applicant or licensee that the board
21 knows or reasonably suspects is involved in the financing,
22 operation or management of the applicant or licensee. The
23 inspection, examination, photocopying and audit shall be in
24 the presence of a representative of the affiliate or its
25 agent when practicable; and

1 (14) except for the powers specified in
2 Paragraphs (1) and (4) of this subsection, carry out all or
3 part of the foregoing powers and activities through the
4 executive director.

5 D. The board shall monitor all activity authorized
6 in an Indian gaming compact between the state and an Indian
7 nation, tribe or pueblo. The board shall appoint the state
8 gaming representative for the purposes of the compact."

9 Section 2. Section 60-2E-9 NMSA 1978 (being Laws 1997,
10 Chapter 190, Section 11) is amended to read:

11 "60-2E-9. EXECUTIVE DIRECTOR--EMPLOYMENT--
12 QUALIFICATIONS.--

13 A. The executive director shall be employed by,
14 report directly to and serve at the pleasure of the board.

15 B. The executive director shall have had at least
16 five years of responsible supervisory administrative
17 experience in a governmental gaming regulatory agency.

18 C. The executive director shall receive an annual
19 salary to be set by the board."

20 Section 3. Section 60-2E-16 NMSA 1978 (being Laws 1997,
21 Chapter 190, Section 18) is amended to read:

22 "60-2E-16. ACTION BY BOARD ON APPLICATIONS.--

23 A. A person that the board determines is qualified
24 to receive a license pursuant to the provisions of the Gaming
25 Control Act may be issued a license. The burden of proving

1 qualifications is on the applicant.

2 B. A license shall not be issued unless the board
3 is satisfied that the applicant is:

4 (1) a person of good moral character,
5 honesty and integrity;

6 (2) a person whose prior activities,
7 criminal record, reputation, habits and associations do not
8 pose a threat to the public interest or to the effective
9 regulation and control of gaming or create or enhance the
10 dangers of unsuitable, unfair or illegal practices, methods
11 and activities in the conduct of gaming or the carrying on of
12 the business and financial arrangements incidental thereto;
13 and

14 (3) in all other respects qualified to be
15 licensed consistent with the laws of this state.

16 C. A license shall not be issued unless the
17 applicant has satisfied the board that:

18 (1) the applicant has adequate business
19 probity, competence and experience in business and gaming;

20 (2) the proposed financing of the applicant
21 is adequate for the nature of the proposed license and from a
22 suitable source; any lender or other source of money or
23 credit that the board finds does not meet the standards set
24 forth in Subsection B of this section shall be deemed
25 unsuitable; and

1 (3) the applicant is sufficiently
2 capitalized under standards set by the board to conduct the
3 business covered by the license.

4 D. An application to receive a license,
5 certification or work permit constitutes a request for a
6 determination of the applicant's general moral character,
7 integrity and ability to participate or engage in or be
8 associated with gaming. Any written or oral statement made
9 in the course of an official proceeding of the board or by a
10 witness testifying under oath that is relevant to the purpose
11 of the proceeding is absolutely privileged and does not
12 impose liability for defamation or constitute a ground for
13 recovery in any civil action.

14 E. The board may refuse to issue a license or
15 certification to an applicant who has been denied a license
16 or certification in this state or another state, who has had
17 a certification, permit or license issued pursuant to the
18 gaming laws of a state or the United States permanently
19 suspended or revoked for cause or who is currently under
20 suspension or subject to any other limiting action in this
21 state or another state involving gaming activities or
22 licensure for gaming activities.

23 F. The board shall investigate the qualifications
24 of each applicant before a license, certification or work
25 permit is issued by the board and shall continue to observe

1 and monitor the conduct of all licensees, work permit
2 holders, persons certified as being suitable and the persons
3 having a material involvement directly or indirectly with a
4 licensee.

5 G. The board has the authority to deny an
6 application or limit, condition, restrict, revoke or suspend
7 a license, certification or permit for any cause.

8 H. After issuance, a license, certification or
9 permit shall continue in effect upon proper payment of the
10 initial and renewal fees, subject to the power of the board
11 to revoke, suspend, condition or limit licenses,
12 certifications and permits.

13 I. The board has full and absolute power and
14 authority to deny an application for any cause it deems
15 reasonable. If an application is denied, the board shall
16 prepare and file its written decision on which its order
17 denying the application is based."

18 Section 4. Section 60-2E-34 NMSA 1978 (being Laws 1997,
19 Chapter 190, Section 36) is amended to read:

20 "60-2E-34. EXCLUSION OR EJECTION OF CERTAIN PERSONS
21 FROM GAMING ESTABLISHMENTS--PERSONS INCLUDED.--

22 A. The board shall by regulation provide for the
23 establishment of a list of persons who are to be excluded or
24 ejected from a gaming establishment. The list may include
25 any person whose presence in the gaming establishment is

1 determined by the board to pose a threat to the public
2 interest or licensed gaming activities.

3 B. In making the determination in Subsection A of
4 this section, the board may consider a:

5 (1) prior conviction for a crime that is a
6 felony under state or federal law, a crime involving moral
7 turpitude or a violation of the gaming laws of any
8 jurisdiction;

9 (2) violation or conspiracy to violate the
10 provisions of the Gaming Control Act relating to:

11 (a) the failure to disclose an interest
12 in a gaming activity for which the person must obtain a
13 license; or

14 (b) willful evasion of fees or taxes;

15 (3) notorious or unsavory reputation that
16 would adversely affect public confidence and trust that the
17 gaming industry is free from criminal or corruptive
18 influences; or

19 (4) written order of any other governmental
20 agency in this state or any other state that authorizes the
21 exclusion or ejection of the person from an establishment at
22 which gaming is conducted.

23 C. A gaming operator licensee has the right,
24 without a list established by the board, to exclude or eject
25 a person from its gaming establishment who poses a threat to

1 the public interest or for any business reason.

2 D. Race, color, creed, national origin or
3 ancestry, age, disability or sex shall not be grounds for
4 placing the name of a person on the list or for exclusion or
5 ejection under Subsection A or C of this section.

6 E. The board may adopt rules allowing a person who
7 is a compulsive gambler to be voluntarily excluded from the
8 area where gaming occurs in a gaming establishment and
9 providing for a self-exclusion list.

10 F. A person who is self-excluded from the area
11 where gaming occurs in a gaming establishment is guilty of
12 trespass pursuant to Section 30-14-1.1 NMSA 1978 if the
13 person enters the area where gaming occurs in a gaming
14 establishment from which the person has been self-excluded.

15 G. A gaming operator licensee, a key executive or
16 any other person employed by or working pursuant to a
17 contract with a gaming establishment is prohibited from
18 disclosing the name of a person who is voluntarily
19 self-excluded from the area where gaming occurs in a gaming
20 establishment. The self-exclusion list shall not be subject
21 to inspection under the Inspection of Public Records Act.

22 H. A person requesting to be voluntarily
23 self-excluded from the area where gaming occurs in a gaming
24 establishment shall be required to execute a valid waiver and
25 release of claims for damages resulting from placement on the

1 self-exclusion list.

2 I. No gaming operator licensee shall be held
3 liable for an action taken as a result of administering a
4 self-exclusion program in accordance with rules adopted by
5 the board."

6 Section 5. Section 60-2E-47 NMSA 1978 (being Laws 1997,
7 Chapter 190, Section 49, as amended) is amended to read:

8 "60-2E-47. GAMING TAX--IMPOSITION--ADMINISTRATION.--

9 A. An excise tax is imposed on the privilege of
10 engaging in gaming activities in the state. This tax shall
11 be known as the "gaming tax".

12 B. The gaming tax is an amount equal to ten
13 percent of the gross receipts of manufacturer licensees from
14 the sale, lease or other transfer of gaming devices in or
15 into the state, except receipts of a manufacturer from the
16 sale, lease or other transfer to a licensed distributor for
17 subsequent sale or lease may be excluded from gross receipts;
18 ten percent of the gross receipts of distributor licensees
19 from the sale, lease or other transfer of gaming devices in
20 or into the state; ten percent of the net take of a gaming
21 operator licensee that is a nonprofit organization; and
22 twenty-five percent of the net take of every other gaming
23 operator licensee. For the purposes of this section, "gross
24 receipts" means the total amount of money or the value of
25 other consideration received from selling, leasing or

1 otherwise transferring gaming devices.

2 C. The gaming tax imposed on a licensee is in lieu
3 of all state and local gross receipts taxes on that portion
4 of the licensee's gross receipts attributable to gaming
5 activities.

6 D. The gaming tax is to be paid on or before the
7 fifteenth day of the month following the month in which the
8 taxable event occurs. The gaming tax shall be administered
9 and collected by the taxation and revenue department in
10 cooperation with the board. The provisions of the Tax
11 Administration Act apply to the collection and administration
12 of the tax.

13 E. In addition to the gaming tax, a gaming
14 operator licensee that is a racetrack shall pay twenty
15 percent of its net take to purses to be distributed in
16 accordance with rules adopted by the state racing commission.
17 An amount not to exceed twenty percent of the interest earned
18 on the balance of any fund consisting of money for purses
19 distributed by racetrack gaming operator licensees pursuant
20 to this subsection may be expended for the costs of
21 administering the distributions. A racetrack gaming operator
22 licensee shall spend no less than one-fourth percent of the
23 net take of its gaming machines to fund or support programs
24 for the treatment and assistance of compulsive gamblers.

25 F. A nonprofit gaming operator licensee shall

1 distribute at least sixty percent of the balance of its net
2 take, after payment of the gaming tax and any income taxes,
3 for charitable or educational purposes.

4 G. No less than one-fourth percent of the net take
5 of the nonprofit gaming operator licensee's gaming machines
6 shall be expended on compulsive gambler treatment and
7 assistance programs." _____

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